



Montana Fish, Wildlife & Parks

Commercial Use Permit Fee Rule

Proposed Changes: August 13, 2009

I. DEFINITIONS

(1) "Client day" means one client served on department land for any portion of one day.

(2) "Commercial use" means any person or entity that utilizes lands under the control, administration, and jurisdiction of the Montana Department of Fish, Wildlife and Parks for consideration. Commercial use includes any person, group or organization that makes or attempts to make a profit, vend a service or product, receive money, amortize equipment, or obtain goods or services as compensation from participants in activities occurring on land that is under the control, administration, and jurisdiction of the department. This includes nonprofit organizations and educational groups that receive money from participants in activities occurring on department land. This includes a person whose business operates on department land, regardless of that person's physical presence at the site, but does not include a person who rents, sells, or otherwise provides equipment or merchandise that is used on department land unless the renting, selling, delivering, or providing of equipment or merchandise takes place on department land. Examples of commercial use that are governed by these rules include but are not limited to: trail rides, guided walks or tours, float trips, guided angling or hunting, game retrieval, professional

dog training, equipment rentals, retail sales, food concessions, filming, firewood cutting, construction-related activities, research when accompanied by paying clients, or any combination thereof.

(3) "Commission" means the department of fish, wildlife, and parks commission of the state of Montana.

(4) "Concession service" means a commercial business that provides multiple services or products on department land. Examples include but are not limited to marinas, lodging, equipment rental or sales, retail sales, and food services.

(5) "Crew member" means a photographer, cinematographer, model, or any supporting member of a commercial photography or filming activity.

(6) "Department" means the department of fish, wildlife, and parks of the state of Montana.

(7) "Educational group" means an organized group that is officially recognized as an educational or scientific institution by a Federal, State, or local government entity. Documentation of this recognition must be on institutional letterhead and include a signature by the head of the institution/department and documentation of official educational or scientific tax exemption as granted by the Internal Revenue Service.

(8) "Guide" means a person who is employed by or who has contracted independently with a licensed outfitter and who accompanies a participant during outdoor recreational activities that are directly related to activities for which the outfitter is licensed.

(9) "Nonprofit organization" means an organization that does not distribute its surplus funds to owners or shareholders and exists solely to provide programs and services that are of public benefit. While they are able to earn a profit, more accurately called a surplus, such earnings must be retained by the organization for its future provision of programs and services. Earnings may not benefit

individuals or stake-holders. Examples include charities and service organizations.

(10) "Outfitter" means any person, except a person providing services on real property that the person owns for the primary pursuit of bona fide agricultural interests, who for consideration provides any saddle or pack animal; facilities; camping equipment; vehicle, watercraft, or other conveyance; or personal service for any person to hunt, trap, capture, take, kill, or pursue any game, including fish, and who accompanies that person, either part or all of the way, on an expedition for any of these purposes or supervises a licensed guide or professional guide in accompanying that person.

(118) "Permit holder" means the person whose name appears on the commercial use permit.

(129) "Permit term" means the time period that the permit is valid, specified on the permit.

(1310) "Restricted water body" means a body of water regulated by special department rules governing commercial use, such as rules that restrict the timing, location, amount, or type of commercial use that occurs. "Restricted water body" may also mean a body of water that is under a cooperative management agreement with another agency concerning commercial use.

(1411) "Site" means an individual unit of land, or portion thereof, owned or managed by the department.

(1512) "Special event" means an organized event that takes place on department land.

(1613) "Unadjusted (gross) income" means the total amount of receipts from a commercial activity that uses department land for any part of a day.

(1714) "Vending" means the sale of goods or services, not from a permanent structure, associated with the public's use of department land, such as food, beverages, clothing, firewood, souvenirs, or film.

~~(1815)~~ "Water-based service provider ~~outfitter or guide~~" means any person who for consideration provides any facilities; camping equipment; vehicle, watercraft, or other conveyance; or personal service for any person to float or otherwise recreate on the water in the absence of hunting or angling, and who accompanies that person, either part or all of the way, on an expedition for any of these purposes or supervises a person in accompanying that person ~~water-related recreation services or supervises someone providing these services. This includes outfitters and guides that are licensed by the state of Montana, and water-based service providers that are not licensed by the state of Montana.~~

II. COMMERCIAL USE PERMIT FEES

(1) The department shall issue and administer commercial use permits pursuant to ARM 12.14.101 thru 12.12.170. In addition to the requirements of the ARM rules, this commercial use permit fee rule establishes fees for commercial use on department land, hereafter referred to as "commercial use fees."

(2) ARM 12.14.160 states when commercial use fees are required and when commercial use fees may be waived or adjusted.

(3) These commission rules establish the amount of fee to be paid to the department for the opportunity to conduct a commercial use on land under the control, administration, and jurisdiction of the department.

(4) The department has discretionary authority to adjust a restricted use permit fee upward or downward to accommodate the nature of the activity, compensate for site impacts or department staffing needs, or for other unique circumstances pertaining to the permitted activity. ARM 12.14.160 provides additional guidance for adjusting permit fees.

~~(4) The commission may retain permit fee systems already in place prior to the adoption of this rule.~~

~~(5) The department may suspend or revoke a permit if the fee is not paid in full by the date specified in the terms of the permit.~~

III. FISHING ACCESS SITE PERMIT FEES

(1) A fishing access site permit fee must be paid to the department when applying for a fishing access site permit.

~~(2) The fishing access site permit fee shall be as follows:~~

~~(a) the permit fee for a water-based outfitter is \$100;~~

~~(b) the permit fee for a water-based guide is \$100.~~

(23) A fishing access site permit is valid for one year coinciding with the department's license year, March 1 to February 28; or three consecutive days as specified on the permit.

(34) Fishing access site permit fees are not refundable.

IV. RESTRICTED USE PERMIT FEES

(1) In order to accommodate the different types of commercial use that may be authorized on department land, and in order to address the different management objectives for department land where commercial use may occur, and in order to cooperate with other state and federal agencies, the department shall have the option to select a fee system that is appropriate for a particular site.

(2) The regional park manager or regional supervisor, in concurrence with the appropriate division administrator, should consider the following when selecting a fee system for a site:

(a) the types of commercial use that occur at the site;

(b) input from the commercial users;

(c) the cost of administering the commercial use;

(d) the revenue generated by the fee system;

(e) consistency with fee systems in place on other department land and sites;

(f) consistency with other state and federal fee systems; and

(g) other factors identified by the department.

~~(3) The department may retain, amend or replace an existing fee system.~~

~~(4) The department may require a minimum annual fee for administering permits or when authorizing commercial use in cooperation with another agency.~~

~~(5) The department may require a permit holder to pay a fee in advance that is an estimate of the actual amount that will be due by the date specified in the terms of the permit. If the department requires prepayment of a fee in advance and the actual amount due is less than the estimated fee paid in advance, the department will credit overpayments to the following year. If an overpayment occurs during the last year of the permit term and the department does not issue a new permit, the department shall refund the amount of the overpayment.~~

V. RESTRICTED USE PERMIT FEES: WATER-BASED OUTFITTERS

~~(1) The restricted use permit fee for water based outfitters is an annual fee that must be paid to the department in full by the date specified in the terms of the permit.~~

~~(2) The department may use one of the following fee systems for water-based outfitters:~~

~~(a) Fee system A: The restricted use permit fee is 3% of the unadjusted (gross) income from water based outfitting that uses department land for any part of a day;~~

~~(b) Fee system B: The restricted use permit fee for licensed water-based angling outfitters is \$5 per client day conducted on department land for any part of a day. This fee is based on three percent of an average advertised daily client rate of \$180, rounded to the nearest dollar. The restricted use permit fee for non-licensed non-angling water based outfitters is \$2 per client day conducted on department land for any part of a day. This fee is~~

~~based on three percent of an average advertised daily client rate of \$65, rounded to the nearest dollar; or~~

~~(c) Fee system C: The restricted use permit fee for licensed water based angling outfitters is \$4 per allocated client day, regardless of whether use occurred. This fee is based on two percent of an average advertised daily client rate of \$180, rounded to the nearest dollar. The restricted use permit fee for non-licensed non-angling water-based outfitters is \$1 per allocated client day, regardless of whether use occurred. This fee is based on two percent of an average advertised daily client rate of \$65, rounded to the nearest dollar.~~

VI. RESTRICTED USE PERMIT FEES: GUIDED TOUR OR TRIP

~~(1) The restricted use permit fee for commercial users conducting guided tours and trips must be paid to the department when entering a department site or in full by the date specified in the terms of the permit. The department may suspend or revoke a permit if the fee is not paid in full by this date.~~

~~(2) The department may adjust the restricted use permit fees for guided tours or groups upward or downward to accommodate the nature of the activity and to compensate for department staffing needs pertaining to the activity.~~

~~(3) The department may use one of the following fee systems for guided tours or trips:~~

~~(a) Fee system A: the restricted use permit fee is 3% of the unadjusted (gross) income from a guided tour or trip that uses department land for any part of a day; or~~

~~(b) Fee system B: the restricted use permit fee is a minimum of \$2 per client day and a maximum of \$10 per client day.~~

~~VII. RESTRICTED USE PERMIT FEES: SPECIAL EVENTS AND VENDING~~

~~(1) The restricted use permit fee for special events must be paid to the department in full by the date specified in the terms of the permit.~~

~~(2) The department may adjust the restricted use permit fees for special events and vending upward or downward to accommodate the nature of the activity and to compensate for department staffing needs pertaining to the activity.~~

~~(3) The department may use one of the following fee systems for special events:~~

~~(a) Fee system A: The restricted use permit fee for a special event is a minimum of \$10 per day and a maximum of \$50 per day; or~~

~~(b) Fee system B: The restricted use permit fee for a special event is a minimum of \$2 per participant and a maximum of \$10 per participant.~~

~~(4) The restricted use permit fee for vending is an annual fee that must be paid to the department in full by date specified in the terms of the permit. The department may suspend or revoke a permit if the fee is not paid in full by this date.~~

~~(5) The department may use one of the following fee systems for vending:~~

~~(a) Fee system A: The restricted use permit fee is 3% of the unadjusted (gross) income from vending that uses department land for any part of a day; or~~

~~(b) Fee system B: The restricted use permit fee is a minimum of \$10 per day and a maximum of \$50 per day.~~

~~VIII. RESTRICTED USE PERMIT FEES: STILL PHOTOGRAPHY AND FILMING~~

~~(1) The restricted use permit fee for still photography and filming must be paid to the department in full by the date specified in the terms of the permit.~~

~~(2) The department may adjust the fees for still photography and filming upward or downward to accommodate the nature of the activity and to compensate for department staffing needs pertaining to the activity.~~

~~(3) The restricted use permit fees for still photography and filming are:~~

~~_____~~

~~_____ (a) 1 person crew: \$25 per day or \$50 per year~~

~~(b) 2 to 5 person crew: \$50 per day~~

~~_____ (c) 6 to 20 person crew: \$100 per day~~

~~_____ (d) 21 to 35 person crew: \$200 per day~~

~~_____ (e) 36 to 50 person crew: \$300 per day~~

~~(f) 51 or more person crew: \$400 per day~~

~~(4) The department may waive or adjust the fees for still photography and filming when the sole purpose of the use is to promote department land and resources.~~

IX. RESTRICTED USE PERMIT FEES: NON-SERVICE AND CONSUMPTIVE TYPES OF USE

~~_____ (1) Examples of non-service and consumptive types of commercial use include but are not limited to construction related use, water pumping, and commercial mushroom or berry picking.~~

~~(2) The restricted use permit fees for non service and consumptive types of commercial use are \$10 to \$300 per day.~~

Commercial Use Permit Fee Table

Primary Type of Use:	Fishing Access Site Permit Fee:	Restricted Use Permit Fee:
Water-based Outfitter: Angling	\$ 100 /year <u>\$35 / 3 days</u>	A) 3% of unadjusted income; B) \$5 per client day conducted; or C) \$4 per allocated client day.
Water-based <u>Service Provider</u> Outfitter : Non-angling	\$ 100 / year <u>\$35 / 3 days</u>	A) 3% of unadjusted income; B) \$2 per client day conducted; or C) \$1 per allocated client day.
Water-based Guide	\$ 100 /year <u>\$35 / 3 days</u>	N/A
<u>Watercraft livery, rental, or demonstration</u>	<u>N/A</u>	<u>\$100 /year</u>
Guided Tour or Trip	N/A	A) 3% of unadjusted income; or B) <u>\$32</u> - \$54 0 per client day.
Special Events	N/A	A) \$10 – \$50 per day; or B) <u>\$32</u> - \$40 per <u>event</u> participant.
Vending	N/A	A) 3% - <u>7%</u> of unadjusted income; or B) <u>\$25</u> 40 - \$75 50 per day; <u>or</u> C) <u>\$100 per year.</u>
Still Photography and Filming	N/A	1 <u>to</u> 3 person crew: \$25 per day or \$50 per year; 4 2 to 75 person crew: \$50 per day; 8 6 to 20 person crew: \$100 per day; 21 – 35 person crew: \$200 per day; 36 – 50 person crew: \$300 per day; 51 or more person crew: \$400 per day.
Non-service Use and Consumptive Commercial Use	N/A	\$300 40 - \$1000 300 per day.

Note: The commercial use permit fee rule includes a menu of fee systems from which the department ~~regional supervisor~~ may select one system for a particular site or sites. The menu of options enables the department to cooperate with other state and federal agencies and ~~enables the regional supervisor~~ to evaluate the types of commercial use present and select the most appropriate fee system based on ease of administration and input from the commercial users.

SHANE COLTON Chairman DATE
Fish, Wildlife & Parks Commission

JOE MAURIER, Director DATE
Fish, Wildlife & Parks